Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests	)	MM Docket No. 94-150
	)	
Review of the Commission's Regulations and Policies Affecting Investment in the Broadcast Industry	)	MM Docket No. 92-51
	)	
Reexamination of the Commission's Cross-Interest Policy	)	MM Docket No. 87-154
	)	
Review of the Commission's Regulations Governing Television Broadcasting	)	MM Docket No. 91-221
	)	
Television Satellite Stations Review of Policy and Rules	)	MM Docket No. 87-8
	)	
Broadcast Television National Ownership Rules	)	MM Docket No. 96-222
	)	
Newspaper/Radio Cross-Ownership Waiver Policy	)	MM Docket No. 96-197

REPLY COMMENTS OF BAHAKEL COMMUNICATIONS, LTD.

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Bahakel Communications, Ltd.
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Charlotte, North Carolina 28232

March 21, 1997

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Summary

Bahakel opposes any "liberalization" of the FCC's multiple ownership rules. In particular, Bahakel believes that the duopoly prohibition promotes the important goals of program diversity and competition. To protect these interests, the Commission should adopt a "bright-line" rule prohibiting duopolies. There should be no waivers of this policy for UHF-UHF or UHF-VHF combinations or for any other reason. In addition, the Commission should require the attribution of LMAs so that the duopoly prohibition is not eroded by the practice of "effective" local ownership.

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REPLY COMMENTS OF BAHAKEL COMMUNICATIONS, LTD.

Bahakel Communications, Ltd. ("Bahakel") submits these Reply Comments in response to the Commission's request for comments in the above-referenced proceedings.[1] In support thereof, Bahakel respectfully states as follows:

I. Introduction

Bahakel is a privately-owned group operator, through subsidiaries or affiliates, of eight television broadcast stations, including WCCB(TV), Charlotte, North Carolina; WOLO(TV), Columbia, South Carolina; WAKA(TV), Selma, Alabama; WBBJ(TV), Jackson, Tennessee; WRSP(TV), Springfield, Illinois; WCCU(TV), Urbana-Champaign, Illinois; WABG(TV), Greenwood, Mississippi; and WBAK(TV), Terre Haute, Indiana. WCCB(TV) competes in Charlotte against two station operators which own a station and control a second station in the market through an LMA.

Bahakel submits these Reply Comments in order to oppose the FCC's proposal to liberalize the television duopoly rule and to support the Commission's proposal to treat television LMAs as "attributable" ownership interests. In general, these comments reflect Bahakel's belief that the Commission's goals of promoting local television broadcast programming diversity and competition would be undermined by any relaxation of the local multiple ownership limits or loosening of the attribution rules. To the contrary, Bahakel believes that the attribution rules should be "tightened

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[1] *Notice of Proposed Rule Making*, MM Docket No. 91-221, FCC 96-437 (Released: November 7, 1996) ("*National TV Notice*"); *Second Further Notice of Proposed Rule Making*, MM Docket No. 91-221 (Released: November 7, 1996) ("*Local TV Second Further Notice*"); and *Further Notice of Proposed Rule Making*, MM Docket No. 94-150, FCC 96-436 (Released: November 7, 1996) ("*Attribution Further Notice*").

up" so that LMAs are considered attributable interests. Given recent regulatory changes such as the relaxation of national ownership limits and the prospect of digital television in the near future, Bahakel believes that the Commission should refrain from relaxing local ownership limits until the effects of these changes can be more fully measured and understood.[2]

II. The Existing Local Multiple Ownership Rules Should Not Be Liberalized

A. The Emerging Competitive Marketplace Does Not Require Liberalization of the Local Multiple Ownership Rules

Bahakel does accept the premise upon which many of the comments in this proceeding are founded: that increased competition in the video programming marketplace leads inexorably to the conclusion that television broadcasters should be allowed to concentrate their local market power to counteract this competition. While it indeed may be economically beneficial for the networks and the larger television group owners -- i.e., those with the financial resources to pursue a strategy of consolidation -- to acquire additional market power through intra-market consolidation, such consolidation may well be at the expense of individual television owners and locally originated programming.

Many of the commenters supporting liberalization of the multiple ownership rules recount recent developments in the emerging competitive video programming marketplace.[3] For example,

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[2] Attached as Exhibit A is a copy of a letter submitted by Bahakel to President Clinton further emphasizing concerns expressed herein.

[3] *See, e.g.*, Comments of Blade Communications, Inc. at 4 ("restating the obvious to recite the vast differences between the television industry of 1964 when the rule was adopted and the multichannel video marketplace of 1997"); Comments of CBS, Inc. at 4 ("broadcasters today face a daunting array of

NBC discusses the emergence of competition from cable television, direct broadcast satellite, and wireless cable as well as the developing competition from telephone companies and the Internet.[4] NBC asserts that the "proliferation" of alternative sources of video programming has had two effects: first, television broadcasters are no longer financially secure vis-a-vis their competition, and second, there is a much greater diversity in video programming.[5] From this foundation, NBC leaps to the conclusion that the original concerns underlying the duopoly rule -- the promotion of competition and program diversity -- are no longer relevant.[6]

This view is erroneous and short-sighted. While it is obvious that the video programming landscape has undergone drastic change since the duopoly rule was adopted, the presence of competition from other media does not mean that television broadcasters are at a "competitive disadvantage" or that the goals of competition and program diversity, within a local television broadcast market, are obsolete.

First, there is no evidence to suggest that the economic viability of over-the-air broadcast television is in jeopardy. For example, the four major networks all reported solid financial years in 1996. Combined, the four networks generated $19 billion in revenue last year, up 23% over 1995.[7]

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competitive challenges"); Comments of The Local Station Ownership Coalition at 34 ("What was once a virtual monopoly for local broadcasters . . . has felt the ravages of this new and ever-expanding competition from multichannel media."); NBC Comments at 3.

[4] NBC Comments at 4-8.

[5] *Id.* at 11-12.

[6] *Id.*

[7] *See Broadcasting & Cable*, "Big year for Big Four" (March 3, 1997) at 4 (attached hereto as Exhibit B).

Moreover, the networks are currently investing heavily in the very businesses which they state are threatening their economic viability. CBS just purchased The Nashville Network and Country Music Television for a reported $1.55 billion, and News Corp. is reported to be spending at least $1 billion in its DBS joint venture with EchoStar, its cable sports venture with Liberty and its start-up news channel.[8] ABC owns interests in ESPN, A&E, and Lifetime. Thus, while it is true that television broadcasters and, in particular, television networks are facing increased competition, their financial performance is still strong and they are meeting the competition head on by investing in their competitor's businesses. The networks are plainly already multichannel video competitors.

Moreover, there is no evidence which suggests that broadcast television is not viable in the long term. Television broadcasters still face little competition in the one service that distinguishes them from other video programming providers -- local news and other locally originated programming. Further, broadcasters are about to enter the digital television age which promises to drastically alter their ability to compete with other providers of video programming by offering multiple channels and digital quality pictures and sound.

The major networks and large group owners may find that the current environment entails additional competition. Nonetheless, small market owners such as Bahakel have to compete daily with larger, better financed group television broadcast owners. Further liberalization of the multiple ownership rules would mean the demise of independent local station ownership. As was aptly put by Centennial Communications in its Comments, "the Commission's rules and policies governing television duopolies and television LMAs must be crafted so as not to enhance the already

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[8] *Id.*

formidable competitive advantages inherent in network ownership and/or assignment to a VHF channel."[9] The importance of such local diversity has been acknowledged by the commenters. Press Broadcasting states:

> "Press opposes any comprehensive relaxation of the limitations currently in place. The number of participants in the local broadcast television marketplace is already extremely limited, and it would ill-serve the well-established goal of increasing diversity of programming to permit any substantial decrease in the number of competitors in any given local market. Press believes that free, over-the-air television operators have for decades been, and will likely remain for years to come, the primary source for news and information for a majority of the American public. This is especially true insofar as matters of local concern are involved . . .. Thus, the availability of a maximum number of separate and competing local broadcast television voices remains vitally important."[10]

Recent evidence from the television marketplace suggests that the Commission's existing multiple ownership rules are working as intended. Fox has developed from a fledgling weblet to the point where it is now considered one of the "major" networks. Warner Brothers ("WB") and Viacom ("UPN") have also started networks which are continuing to develop and increase in market share. It is fair to question whether these new, emerging networks could have developed to the extent they have if ownership limits had been liberalized. The ability of emerging networks to find outlets for their programming is fundamental to their survival. The concentration of market power into the hands of only a few owners would impair this ability and would, therefore, hamper the growth of new and competitive broadcast networks.

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[9] Comments of Centennial Communications, Inc. at 3.

[10] Comments at 1-2.

B. Market Definition

In its *Local TV Second Further Notice*, the Commission tentatively concludes that the duopoly rule should permit common ownership of television stations in different "Designated Market Areas" (DMAs) as long as the Grade A signal contours do not overlap.[11] The Commission states that the proposed standard "may more accurately reflect a television station's geographic market and may further our diversity and competition goals."[12]

Bahakel agrees that the DMA designation does more accurately reflect a station's geographic market. Bahakel supports the approach advocated by the LSOC and many other commenters, which would permit common ownership of television stations in separate DMAs regardless of contour overlap, as well as common ownership of stations in the same DMA with no Grade A overlap. Bahakel agrees that the DMA approach best defines the economic market in which a station competes.

C. Waiver Policy

Bahakel does not support a liberalized waiver policy allowing UHF-UHF or VHF-UHF combinations. It is important that there be a "bright-line" rule governing local television ownership.

In its Comments, the LSOC advocates an "outright exception" to the duopoly prohibition for UHF-UHF and UHF-VHF ownership in a single market.[13] LSOC attempts to justify this exception by reference to the alleged disadvantages of UHF stations, including smaller coverage, audiences,

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[11] *Local TV Second Further Notice* at ¶ 13.

[12] *Id.*

[13] LSOC Comments at 72.

and revenues as compared with that of VHF stations.[14] LSOC argues that, because of these "disadvantages," combinations involving UHF stations "present no material risk of harm to competition or the public interest."[15]

Similarly, NBC proposes that the Commission allow the ownership of up to two television stations with overlapping Grade A contours, where one or both stations is a UHF station, unless there is a finding of "demonstrable harm" to competition or diversity (NBC does not state whether such duopolies would be permitted if the stations were also in the same DMA).[16]

Under the UHF waiver policy proposed by many of the commenters in this proceeding, an owner of a successful VHF station could be paired with a dominant UHF station without violating the duopoly rule. Clearly, this is a case of the exception swallowing the rule.

A duopoly by any other name is still a duopoly. The Commission should not accept the fiction that UHF-UHF or UHF-VHF duopoly is good policy when VHF-VHF is bad policy. Instead the Commission should adopt a policy which is intellectually honest and internally consistent: all duopolies should be prohibited.

The public would be far better served by diversity of ownership which would not only promote different editorial voices but would promote more and better programming. See Associated Press v. United States, 326 U.S. 1, 65 S.Ct. 1416, 89 L.Ed. 2013 (1945). ("[The First] Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public . . .."). Contrary to the gloomy

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[14] Id.

[15] Id. at 75.

[16] Comments of National Broadcasting Company, Inc. at p. 13.

assessment of the potential of UHF stations by many of the large group owners, UHF stations can successfully compete against VHF stations. While the performance of UHF stations, viewed as a whole rather than individually, may generally lag behind that of VHF stations,[17] this apparent disparity may well result from programming rather than technical deficiencies. It is fair to assume that over time as the traditional big-three networks migrate to UHF stations, viewership will follow and differences in UHF-VHF viewing patterns will moderate.

The evidence concerning alleged UHF disadvantages is simply inconclusive at the present time and does not justify an "outright" exception to the duopoly prohibition for UHF combinations. With the steady emergence of the WB and UPN networks, many UHF stations are only beginning to have access to desirable programming. Combined with the steady growth of cable television, UHF stations are increasingly gaining coverage and viewers. Moreover, the effect of the transition to digital television on UHF stations is yet to be determined. In light of these incipient developments, it is premature, to say the least, for the FCC to allow an exception to the duopoly prohibition. In the end, the justification for the exception advocated by LSOC and the networks is constructed on shifting and is insufficient to support Commission action at the present time.

D. Attribution of LMAs

Bahakel supports the Commission's proposal to attribute television LMAs for purposes of the Commission's multiple ownership rules. Currently, LMAs are being employed in a fashion which can fairly be viewed as circumventing the Commission's ownership limits. From a practical

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[17] See LSOC Comments at 73 n. 165.

business and management standpoint, LMAs are functionally identical to ownership. Consequently, the Commission should end the fiction that presently pervades the television market and require the attribution of LMAs for multiple ownership purposes. Together with the relaxation of the duopoly rule, the effect of attribution of television LMAs should be minimal. Bahakel's WCCB(TV) competes in Charlotte against competitors which control two stations in the market. The fact is that for all practical purposes there competitors may as well be considered to operate "legal" duopolies.

It is Bahakel's experience that call it what you will, ownership, control, influence or opportunity -- this sort of concentration results in a net loss of diversity to viewers. Charlotte is a seven station market. Bahakel believes that viewers in Charlotte would benefit more if there were seven owners and operators of these stations rather than as at present, where there are seven owners but only five operators.

In its Comments, Centennial Communications injects a dose of reality into the otherwise rosy picture painted by the networks and large group operators concerning the purported "virtues" of LMAs. The example cited by Centennial shows that LMAs can and do result in the loss of program diversity. As stated by Centennial: "As a result of LIN's LMA, therefore, program diversity has been significantly reduced -- viewers in the local market receive a great degree of duplicative programming, effectively reducing the number of television voices within the marketplace from seven to six."[18] In light of its experience in the Charlotte market, Bahakel concurs with this concern.

[18] Comments of Centennial Communications, Inc. at 5.

III.
Conclusion

For the reasons described above, Bahakel opposes any effort to liberalize the existing duopoly rule. Bahakel supports the Commission's proposals tighten the LMA attribution rules.

Respectfully submitted,

BAHAKEL COMMUNICATIONS, LTD.

By: Beverly B. Poston

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March 21, 1997

EXHIBIT A

Letter to
President Clinton

Bahakel
Communications
Radio • Television • Cable

February 27, 1997

The President
The White House
1600 Pennsylvania Avenue
Washington, DC

Re: ***Broadcast Policies and the Small Businessmen***

Dear President Clinton:

I hope you will appreciate the circumstances which have led me to write this letter. I am the operator of a comparatively small broadcasting company (eight television stations and 12 radio stations). My family has been in the broadcasting business for nearly 50 years. In that time, we have seen a lot of changes. We have seen the regulatory pendulum swing from one extreme to the other. Throughout, we have maintained our commitment to public service, whether legislated to do so or not.

We face many changes on the horizon, both technically and legally. One of the challenges of our business has always been keeping up with the regulations. When we are in a position to hire new staff, the FCC Guidelines on Equal Opportunity Employment require a tremendous amount of record-keeping, not to mention the public file requirements. In addition, our company is now expending time and significant money in planning for the digital future for our industry. I am very concerned about how the Federal Communications Commission is planning to allocate spectrum for mid-size markets, such as those where most of our television stations are located.

I am also concerned that the broadcast industry is expected to bear a disproportionate share of "campaign reform." Although spending on radio and television amounts to only about a third of the spending by candidates for the House, and less than half for candidates for the Senate, the current wisdom seems to be that somehow the attack adds, the ridiculously high amounts of money raised and spent on campaigns will be lowered if broadcasters are forced to give free time. As you know, we must already provide time at our lowest rate. Legally, this requirement is based upon an outdated premise that there is spectrum scarcity. Of course, as a matter of physics, the spectrum is scarce. But as a matter of reality, newspaper printing presses are rarer than radio or television stations. If you want true reform, allow only those candidates who agree to voluntary spending limits to take advantage of the lowest unit charge. Let those who will not agree to voluntary limits pay for advertising like everyone else: Based on rates determined by the free market.

P.O. Box 32488
Charlotte, NC 28232
704-372-4434
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Finally, on the deregulatory front, I have very real concerns about the possibility of television duopoly in mid-size and smaller markets. I believe that allowing major operators to own more than one outlet in those markets will seriously endanger independent broadcasters and the diversity of viewpoints which they represent. If we want to decrease regulation, let us decrease the number of forms we have to fill out, the number of reports we have to make, the files we have to maintain, etc., etc. The move to eight-year license terms is an excellent beginning, but allowing duopoly in mid and small-size markets goes too far.

I appreciate your time and attention to these issues. Sometimes as I watch the debates in Congress, or the proceedings before the Federal Communications Commission, I begin to believe that the legislators and regulators think that the only broadcasters out here are Disney, General Electric and Westinghouse. Let me assure you, there are still some independent broadcasters. We regularly serve the public interest by broadcasting news, public affairs programs and public service announcements regarding both matters of national concern (such as discouraging drinking and driving) and matters of concern to our communities of license. We do all of this in an environment which is highly competitive. Not only must we battle our fellow broadcasters, but also cable, satellite and newspaper. The rigors of that competition have served the American public well. Please remember that as these important broadcasting policies are debated.

Sincerely,

Beverly Bahakel Poston

Beverly Bahakel Poston
Executive Vice President

BBP/sj

S10\Pres.Ltr

EXHIBIT B

Broadcasting & Cable, "Big year for Big Four"
(March 3, 1997) at 4

Broadcasting & Cable

Top of the Week

Big year for Big Four (or was it?)

While 1996 revenue is up, ABC, CBS, Fox numbers are helped by creative accounting

By Steve McClellan

NEW YORK

Financially speaking, 1996 was a boffo year for NBC (see chart). For CBS, ABC and Fox, the revenue picture was pretty solid, as the broadcast economy continued to hold up well. But all three used purchase-price accounting benefits to make operating profits look significantly better on paper than the actual results.

Combined, the four networks generated $19 billion in revenue last year, up 23% over 1995. On paper, operating profits came to $3.36 billion, up 24% over the previous year.

However, analysts say the paper profits are misleading because CBS, ABC and Fox added back hundreds of millions of dollars to their bottom lines in the form of amortization and depreciation benefits. Without those accounting benefits, combined 1996 operating profits for the Big Four were up 3% at most, analysts say.

News Corp., for example, declared an operating profit of roughly $90 million for its Fox Broadcasting Co. for fiscal '96. But analysts say company officials also acknowledge that $125 million in accounting benefits is built into that number, "so in terms of real performance for the year, the Fox network had an operating loss of about $35 million," says one Wall Streeter: "It's a way to sweeten the results, and this year three of the four networks have very sweetened results."

Disney's 1996 annual report applies a total $534 million in purchase-price benefits to ABC's profits. Without those benefits, ABC's operating divisions would have shown a combined drop of 14% in operating profit.

Analysts say Disney executives also acknowledge that they boosted the ABC Television Network's profit picture for 1996 using purchase-price accounting benefits, a generally accepted financial practice. Disney has given ABC an on-the-books profit of $410 million for last year, analysts say—roughly $35 million more than in 1995.

At the same time, the network has suffered double-digit rating declines in key selling demographics. The 1996 designated profit number for ABC-TV is also $25 million more than NBC's, the top-rated network in prime time, late night and morning.

The reason ABC-TV's profit is so high is the accounting benefit, which Disney officials refuse to break out, even to the investor community. But analysts estimate that it is $200 million or more. Discounting that benefit would put ABC-TV's real pretax operating profit at no more than $210 million, at least a 30% drop from its 1995 pretax operating profit.

Westinghouse has acknowledged that it sweetened its media group profits by $164 million worth of purchase-price accounting benefits. Most of it, $131 million, has been allocated to boost the CBS-TV operating profit number to $25 million for 1996. Without it, the network would have posted a $106 million operating loss. The network was particularly hard hit in the fourth quarter, when it suffered an $86 million loss.

Fox also had a tough 1996 fourth quarter, which network officials have said will cost Fox $50 million–$60 million in profits for fiscal '97. (News Corp. operates on a fiscal year that ends June 30.)

Declining ratings and increasing

Fiscal '96: The Four-Network Picture

(Dollar figures in millions)

Home Improvement

Touched by an Angel

ER

X-Files

	Revenue	Change from '95	Profit	Change from '95
ABC				
Radio networks	$160	—	$50	+14%
Radio stations	$260	+13%	$100	+24%
TV network	$3,125	–2%	$410 *	+9%
Owned TVs	$996 **	+11%	$440	–3%
Cable/intl.	$1,690	+47%	$600	+100%
Total	**$6,231**	**+4%**	**$1,600 *****	**+21%**
CBS				
Radio network	$75	+7%	$0	—
Radio stations	$480	+11%	$160	+50%
TV network	$2,581	+2%	$25 *	—
Owned TVs	$809	–6%	$280	–7%
Cable/other	$201	+28%	–$170	NM
Total	**$4,146**	**+3%**	**$351**	**-13%**
NBC				
TV network	$4,000	+33.8%	$380	+15.2%
Owned TVs	$940	+40.3%	$500	+38.9%
Cable/intl.	$290	+11.5%	$10	—†
Total	**$5,230**	**+33.4%**	**$890**	**+29%**
Fox				
TV network	$1,700	+24%	$90 *	+20%
Owned TVs	$800	+6%	$410	+13%
Twentieth	$375	+5%	$70	+7%
Cable/intl.	$600	+15%	$0	—
Total	**$3,475**	**+22%**	**$570**	**+25%**

costs (for both production and affiliate compensation) contributed to the profit drops for ABC, CBS and Fox last year, analysts say.

At NBC, revenue was up over the 1995 total by $1.1 billion, or 33%, to more than $5.2 billion. Operating profit was up 29%, to almost $900 million. The summer Olympics contributed $650 million to the network's 1996 revenue.

All the networks continue to invest heavily in cable and satellite ventures, both in the U.S. and abroad. CBS just plunked down $1.55 billion for The Nashville Network and Country Music Television. News Corp. will spend at least $1 billion over the next 18 months on its new DBS joint venture with EchoStar, its cable sports venture with Liberty and its start-up news channel. ■